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COURT-MARTIAL SENTENCES DURING THE WAR

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[A study of sentence-periods for the several criminal offenses is one of the rarest things to be found in the annals of penology. The most extensive one available, for recent years, is that presented in Table 42 of the 1910 Census volume "Prisoners and Juvenile Delinquents in the United States" (published in 1918); but even that one is not sufficiently detailed for certain important purposes.

All the more valuable scientifically, therefore, are the data of court-martial sentences presented in two recent letters of the Judge Advocate General of the Army, on the subject of "Military Justice During the War." The first letter was published in the U. S. Official Bulletin for March 10, 1919; the second letter was published as a pamphlet, by the War Department, on March 29, 1919. Both letters cover substantially the same ground, as to sentences of courts-martial; but each contains important data and comments not given in the other. Moreover, the two may not be readily accessible to all students of this subject. For this reason it has been deemed worth while to reproduce here, for permanent enbodiment among the records of criminal science, those parts of the two letters, placed consecutively, which deal with court-martial sentences.

The letters refer, once or twice, to a more extensive tabulation forming the basis of the statistics here abstracted in summary. This tabulation remains as yet in manuscript, in the office of the Secretary of War, to whom the letters were addressed.

It will be understood that the letters from which these passages are reprinted were written to the Secretary of War, presenting data upon topics of military justice which had been the subject of public criticism in Congress and elsewhere.—J. H. W.]

I. SEVERITY OF SENTENCES

In considering the severity of sentences (and this topic has been the main theme of the criticisms uttered on the floor of Congress) I must make my comments in the following order:

(*a*) The sentences as they have actually been imposed;

(*b*) The reasons for those sentences; and

(*c*) The measures now taken to give proper mitigation or remission of sentences.

(*a*) *The Sentences Actually Imposed*—In considering the severity of sentences, it is, of course, necessary to examine separately the

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different offenses, since obviously the appropriate punishment varies widely for offenses of different moral culpability and different danger to military discipline. Space does not permit me here to set forth the facts for all of the offenses and sentences covered by the general courts-martial since April 6.

I handed to you on February 12, a complete table of data as to the length of sentences, for the period October, 1917, to September, 1918, covering the nine principal military offenses of desertion, absence without leave, sleeping on post, assaulting an officer or non-commissioned officer, disobeying an officer or a non-commissioned officer, mutiny, and disobeying a general order or regulation.[2]

TABLE I—SENTENCE PERIODS FOR THE NINE PRINCIPAL MILITARY OFFENSES, OCTOBER, 1917, SEPTEMBER, 1918

Offenses	October 1, 1917, to September 30, 1918		
	Number of court-martial sentences Oct. 1, 1917 to Sept. 30, 1918	Total years of sentences	Average sentence in years
Total Offenses	12,472	.....	.....
Desertion	2,025	15,354.20	7.58
Absence Without Leave	3,362	5,361.39	1.59
Sleeping on Post	609	894.50	1.47
Assault; Attempt to Assault	173	462.34	2.87
Officer	31	127.25	4.10
N. C. O.	142	335.09	2.36
Mutiny	51	404.50	7.93
Disobedience, Disrespect, Disloyalty	1,404	4,986.94	3.55
Regulations	208	406.72	1.96
Orders	1,196	4,580.22	3.83
Officer	785	3,330.99	4.24
N. C. O.	411	1,249.23	3.04
Miscellaneous, Forgery, Larceny, etc.	4,848	.....	.....

[2][As this table is too lengthy for inclusion here, the national summaries for the year are alone given; omitting the part showing distribution by months and by jurisdictions.—ED.]

TABLE I—(Continued in Detail)

	Desertion		Absence Without Leave on Post		Sleeping on Post		Assaulting Superior Officer		Assaulting Non-Commissioned Officer		Disobeying Non-Commissioned Officer		Mutiny, etc.		Disobedience of Standing Orders		Disobeying Orders of Superior Officer	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Total Convictions.	2025	100.00	3362	100.00	609	100.00	31	100.00	142	100.00	411	100.00	51	100.00	208	100.00	785	100.00
Forfeiture Only.....	....	.....	367	10.92	62	10.12	....	.....	9	6.33	34	8.27	..	....	25	12.02	47	5.99
Below 2 yrs.	482	23.80	2251	66.95	380	62.40	15	48.39	81	57.04	207	50.36	1	1.96	126	60.58	343	43.69
2 to 3 yrs...	158	7.80	147	4.37	41	6.73	2	6.45	16	11.27	32	7.79	14	27.45	11	5.29	62	7.90
3 to 5 yrs...	149	7.36	159	4.73	55	9.03	....	.....	10	7.04	33	8.03	3	5.88	9	4.33	64	8.16
5 to 10 yrs...	509	25.14	285	8.48	55	9.03	8	25.81	16	11.27	50	12.17	5	9.81	22	10.58	114	14.52
10 to 15 yrs..	343	16.94	105	3.12	13	2.13	5	16.12	5	3.52	32	7.79	22	43.14	10	4.80	91	11.59
15 to 25 yrs..	263	12.99	32	.95	1	.17	1	3.23	3	2.11	19	4.62	4	7.84	5	2.40	45	5.73
25 yrs+.....	120	5.92	15	.45	....	.....	....	.....	1	.71	3	.73	2	3.92	....	.....	18	2.29
Death, or Imprisonment for Life.....	1	.05	1	.03	2	.33	....	.....	1	.71	1	.24	....	.....	....	.....	1	.13

(1) *Desertion* (Table I, No. 1)—No one can approach the subject of sentences for desertion in time of war without keeping in mind the solemn and terrible warning recorded expressly for our benefit by Brig. Gen. Oakes, acting assistant provost marshal general for Illinois, as set forth in his report printed in the Report of the Provost Marshal General for the Civil War (Part II, p. 29). In impressive language he lays the following injunction upon us:

> Incalculable evil has resulted from the clemency of the government toward deserters. By a *merciful severity* at the commencement of the war the mischief might have been nipped in the bud, and the crime of desertion could never have reached the gigantic proportions which it attained before the close of the conflict. The people were then ardent and enthusiastic in their loyalty, and would have cheerfully and cordially assented to any measures deemed necessary to the strength and integrity of the Army. They had heard of the "rules and articles of war," and were fully prepared to see * * * that deserters from the Army would be remorsely arrested, tried by court-martial, and, if guilty, be forthwith *shot to death with musketry.*
>
> This was unquestionably the almost universal attitude of the public mind when hostilities began, and the just expectations of the people should not have been disappointed. Arrest, trial, and execution should have been the short, sharp, and decisive fate of the first deserters. * * * The Government was far behind the people in this matter, and so continued, until long and certain impunity had thrown such swarms of deserters and desperadoes into every State that it was then too late to avert the calamity. * * * I state these things so that, *if we have another war, the Government may start right * * * put deserters to death,* enforce military law, strike hard blows at the outset, tone up the national mind at once to a realization that *war is war;* and be sure that such a policy will be indorsed and sustained by the *people.*
>
> There are other suggestions to be made in respect to deserters, but the one I have already advanced—the non-indorsement of the penalties provided by the military code for the crime of desertion, especially at the beginning—is, beyond all question, the grand fundamental cause of the unparalleled increase of that crime, and of the inability of district provost marshals, with their whole force of special agents and detectives, to rid the country of deserters.

This solemn warning was naturally in our minds at the opening of the present war. But, in spite of its urgency, it was decided to exhibit our faith in the American people, and to place our trust in that loyalty and devotion to duty which we felt sure would characterize the vast majority of to-day's young American manhood. We believed that the "short, sharp, and decisive fate of the first deserters" should not be the extreme penalty as urged by Gen. Oakes.

And the view was generally accepted in the Army that terms of imprisonment should be ordinarily deemed the adequate repressive measure for the few who might need it. And it is a fact that of the (approximately) 3,000 convictions for desertion, during the war, the sentence of death was imposed in only 24 cases, and in every such case it was commuted or remitted.

It must, therefore, be kept in mind at the outset that the refusal to adopt the policy of death sentences for desertion was *in itself a repudiation of the policy of extreme severity;* and that the practice of limiting desertion sentences to terms of imprisonment is in itself the adoption of a policy of leniency. Reproach for severity must deal with the fact that the policy adopted disregarded both the extreme penalty authorized by Congress and the warnings of the Civil War.

Turning, then, to the recorded facts, we find in the table that the total number of convictions for desertions for the year October, 1917-September, 1918, was 2,025; that the average sentence was 7.58 years; that nearly 24 per cent of these sentences were for less than 2 years; that 64 per cent were for less than 10 years; and that only 35.90 per cent were for a greater period than 10 years. The Article of War reads:

> Any person who deserts shall, if the offense be committed in time of war, suffer death, or such other punishment as the court-martial may direct.

It would seem, therefore, that in point of severity the result of courts-martial sentences for desertion can not be charged with erring on the side of severity.

You will notice that I do not here attempt to account for the justice of individual cases. Certain of the sentences for 25 years, or even for lesser periods, are open to criticism as excessively severe under the circumstances of the individual case. But it must be kept in mind that these trials and sentences were found legally valid by the Judge Advocate General's Office; that the only issue of doubt that could arise concerns the quantum of the sentence; and that the scrutiny of the clemency section in the Military Justice Division of the office may be relied upon to detect cases of excessive severity before any excessive portion of such a sentence has been served. But the excessive severity of an individual sentence is not the question here; that question would call for the scrutiny of the particular case.

The question here is of general conditions. What the above figures show in respect to general conditions, or the trend of conditions, is that the practice has been one of relatively moderate penalties instead of the severest one permissible under the law.

(2) *Absence without leave* (Table I, No. 2)—Absence without leave is an offense which represents, in many instances, cases of actual desertion; but, owing to the movements of the military unit and thus the difficulty of obtaining the necessary technical proof, the actual deserter is frequently convicted of no more than an absence without leave. It is, therefore, plain that the offense of absence without leave may, upon its circumstances, merit an extremely severe penalty, equal to that of desertion. In time of war this offense may lawfully be punished by any penalty short of death; in time of peace a presidential order limits the maximum penalty to six months' confinement.

For the year ending September, 1918, the total convictions for this offense number 3,362; the average sentence was 1.59 years (or only three times the small maximum allowed in peace times); 11 per cent of the offenses received no penalty of imprisonment; 67 per cent received a sentence of less than two years imprisonment; and only 22 per cent received a penalty of more than two years in prison. When it is remembered, as above pointed out, that this offense is in many cases virtually the offense of an actual deserter, it will be seen that the number of the sentences over two years is not disproportionate to the probable ratio of cases individually calling for the higher penalties. An average sentence of 1.59 years for this offense, committed in time of war, can not be deemed an exhibition of severity, where in fact the act of Congress establishing the Articles of War leaves the court-martial absolutely untrammelled (short of the death sentence) in the penalty to be fixed to this offense.

(3) *Sleeping on post* (Table I, No. 3)—The offense of sleeping on post is punishable by death in time of war, and in time of peace "any punishment except death that a court-martial may direct." There were two sentences of death imposed by courts-martial in France for sleeping on post in the zone of operations and in the front-line trenches; those two individual cases I have already commented on in the first part of this letter. Of the whole 609 convictions, some 575 of the offenses took place in the United States, where it may be supposed that the highest penalty suitable for forces engaged with the enemy would hardly be applicable. And it is a fact that of the entire 575 there was only one sentence over 15 years and only four sentences over 10

years. For 10 per cent of the sentences no imprisonment at all was prescribed; for 62.40 per cent of the sentences, the period imposed was less than 2 years; and all told, only 27.42 per cent of the sentences were for more than two years. Having in view the maximum provisions of the Articles of War, it seems plain that the treatment of this offense by courts-martial can scarcely be called a harsh one.

(4) *Assaulting a superior officer* (Table I, No. 4)—The offense of assaulting an officer is punishable, under the Articles of War, by "Death or such other punishment as the court-martial might direct"; and this irrespective of a state of war or of peace. The total convictions for this offense were only 31, giving an average sentence of 4.10 years; nearly 50 per cent of them being for a period of less than 2 years. Again, one may say that in the face of the capital punishment expressly authorized as a maximum by the Articles of War, courts-martial have not followed a practice which may be characterized as harsh or severe.

(5) *Assaulting a noncommissioned officer* (Table I, No. 5)—The offense of assaulting a noncommissioned officer is liable to "any punishment that the court-martial may direct"; and this irrespective of a state of peace or war. The total number of such convictions was 132; the average sentence was 2.36 years; more than 6 per cent were punished without imprisonment, and more than 57 per cent were punished by imprisonment of less than 2 years. There are half a dozen sentences for upwards of 10 years; the justification for these must rest upon their individual circumstances. But the average sentence of 2.36 years, compared with the maximum allowable under the Articles of War, can not be admitted to exhibit a general disposition to severity, but quite the contrary.

(6) *Disobeying a noncommissioned officer* (Table I, No. 6)—The disobedience of the lawful order of a noncommissioned officer is by the Articles of War placed under the same penalty as the assaulting of a noncommissioned officer, that is, the court-martial has complete discretion in choosing the penalties, except that of death. The total number of convictions was 411, and the average sentence was 3.04 years; 8.27 per cent of sentences gave no period of imprisonment; 50 per cent gave a period of less than 2 years.

In itself, this average sentence, comparing it with the maximum allowed by the Articles of War, can not be referred to as a severe one. It is notable, however, that this offense of disobeying a noncommissioned officer, received a higher average sentence, viz., 3.04 years,

than the apparently more heinous one of assaulting a noncommissioned officer, viz., 2.36 years. It may be admitted that some explanation remains to be sought for this apparently anomalous result, but it can be pointed out here that the disobedience of a noncommissioned officer is often of a deliberate character making the offense a highly serious one, whereas the offense of assaulting an officer is often the result merely of a quick temper without any deliberate intention of resistance to authority, and that it thus deserves considerate attention by the tribunal.

(7) *Mutiny* (Table I, No. 7)—There were 51 convictions for mutiny; the average sentence was 7.93 years; 27 per cent fell between 2 and 3 years, and 43 per cent fell between 10 to 15 years; the other sentences scattering over the various percentages. The Articles of War provide that a person guilty of mutiny "shall suffer death or such other punishment as the court-martial may direct," irrespective of a state of peace or war. When committed in its most significant form, it is, of course, the most heinous offense of a soldier. But it may also be committed under much less culpable circumstances. In short, it gives an opportunity for the widest range of discretion in the imposition of sentences. This inherent quality is reflected in the wide range of sentences actually imposed. In view of the fact that, in an army numbering more than 3,000,000 men at the time covered by these records, there were only 51 offenses in the nature of mutiny or related thereto, out of a total number of offenses of 12,472, it is plain that the number of such convictions is extremely small; and it must be inferred that the commanding officers were not seeking relentlessly for offenses that could be characterized as mutiny, and that the offenses actually characterized as such were offenses which well deserved the name. From June, 1917, to June, 1918, when the Regular Army and National Guard together consisted of less than 300,000 men, the total number of convictions for mutiny was 43; and yet with an Army of 10 times the size, the number of convictions for mutiny increased only one-fifth. It seems obvious that the practice of courts-martial during the year of the war could hardly justify a reproach of severity for the offense of mutiny.

(8) *Disobeying standing orders* (Table I, No. 8)—This offense is punishable under the Articles of War by such sentence of imprisonment as the court-martial may direct. The direct number of convictions for this offense was 208; the average sentence is 1.96 years; for 12 per

cent of the sentences no period of confinement was imposed; for 60.58 per cent a confinement of less than 2 years was imposed; 10.58 per cent of sentences were between 5 and 10 years; the rest scattering in other periods. In view of the maximum limit permitted to the discretion of the court under the Articles of War, and in view of the variety of circumstances effecting the nature of this offense, it can not be said that the tendency of the courts has been to severity.

(9) *Disobeying an officer* (Table I, No. 9)—The offense of disobeying a superior officer is punishable, under the Articles of War, by "death or such other punishment as the court-martial may direct"; it is covered by the same article of war that deals with assault on a superior officer, but obviously it should usually rank as an offense of lower grade. The total number of convictions for this offense was 785; the average sentence was for 4.34 years; 6 per cent of sentences were punished by imprisonment; 43.69 were punished by confinement of less than 2 years; and a trifle over 50 per cent were punished by some period greater than 2 years, there being 1 death sentence and 18 sentences for 25 years or more. It will be noticed that the average sentence for this offense was almost identical with the average sentence for the offense (No. 4 above) of assaulting a superior officer, and that in both cases a little less than 50 per cent of sentences were for periods of confinement less than 2 years. But these two offenses were treated differently with respect to the sentences for higher periods; the bulk of the long-termed sentences for assaulting an officer lying between 5 and 10 years, while for the offense of disobeying an officer, they were spread out over the periods between 3 years and 25 years or more. Comparing the absolutely unlimited nature of the punishment permitted by the Articles of War to be imposed by the court-martial, and observing that 50 per cent of these sentences were for periods of under 2 years, it can not be said that the tribunals appear to be seeking to exercise the maximum of severity allowable, but rather the contrary.

Moreover, in interpreting these sentences for the offense of disobedience of an officer, it is worth while to remind the civilian public that little or nothing turns upon the nature of the command itself which is disobeyed. Much has been made in public discussion of one or two sentences in which the subject of command was apparently of trivial consequence; for example, a command to an enlisted man to give up some tobacco unlawfully in his possession, or a command to clean a gun. But in military life, obviously it is not the thing

commanded that is material; it is the act of deliberate disobedience. Deliberate disobedience in one thing, if unchecked, means deliberate disobedience in any and all things. It was a condition of deliberate disobedience, in small and great things alike, which caused the Russian Army to melt away and transformed Russia into the home of Bolshevism. The military officer does not rule by violence, but by moral sway. He is able to organize his men upon the battlefield only because he can be confident that every command of his in matters great or small will result in instant and unquestioned obedience. Hence, an act of military disobedience is a symptom as alarming to the military commander as is the first incipient cancer cell to the surgeon—a warning that knife must soon be applied. The War Department must invoke and expect the sympathy and support of an enlightened public in realizing that the offense of disobedience is to be ranked among the cardinal offenses of the soldier and requires the most rigid measures for its repression.

This completes my survey of the sentences for the nine principal military sentences.

In the foregoing comments it will be noticed that, since a charge of excessive severity implies the habitual resort to a maximum standard allowable under the law, the standard here to be taken must of necessity be the standard set by the Article of War as adopted by the act of Congress. Judging by this standard, the practices of the court-martial, to any candid observer, must be vindicated from the charge of the habitual employment of severity; rather have they proceeded in a direction of a lenient use of their discretion.

But the mind naturally seeks to test this issue of severity by any other accepted standard that may be available, apart from the intangible standards of individual notions. There appear to be two and only two such other standards available. One is the standard to be gathered from former practice in the Army; the other is the standard to be gathered from civil courts. Neither of these is entirely appropriate; but it is my duty to see what light can be thrown by them upon the present subject.

(A) *Former practices of courts-martial*—Unfortunately the records available in the printed reports of former years are but scanty in their application to the present purpose. No data as to the length of sentences have been published in the former reports of my office, except in the report for the fiscal year 1917-18, and then only for the offense of desertion. Taking these data for such light as they may give us (Table XIV, page 31, Report of the Judge Advocate General,

1918), we find that the length of sentence did increase gradually during that year. The figures are as follows:

TABLE II—DESERTION

Month	Convictions	Total months' confinement given as part of the sentence	Average months' confinement (total months' confinements divided by sentences imposed)
1917			
May	3	48	15
June	8	276	34.5
July	17	560	52.94
August	27	540	22.5
September	44	1,604.75	38.21
October	56	2,521.75	45.85
November	52	1,863	36.53
December	93	5,153	57.26
1918			
January	203	9,057	48.43
February	202	8,925	50.14
March	202	13,088.75	69.25
April	228	16,906	79.75
May	194	19,109	99.53
June	224	24,399	112.96
Total	1,553	104,051.25	71.02

It will thus be seen that the average sentence for the year ending June, 1918, was almost exactly six years, as compared with an average of 7.58 years for the period October 1, 1917, to September 31, 1918, and that the average of six years for the period May, 1917-June, 1918, started at between two and three years for the first seven months of the war, and then rose steadily until it was reaching nine years in the fifteenth month of the war.

I do not pretend to be able to interpret the significance of this gradual rise in the average length of sentence for the offense of desertion. So many conditions are involved that any one of several hypotheses may account for the circumstance. I content myself with pointing out, as a possible explanation, the principles already quoted from Brig. Gen. Oakes in his report on desertion in the Civil War, viz., it is quite possible that the military tribunals began with an extremely low penalty, but that as the training of the new forces proceeded in camps a general impression obtained that the protection of the Army against the spread of desertion required a somewhat more stringent penalty.

As to any other offenses than desertion, and as to any periods prior to June, 1917, it is not now feasible to ascertain what were the standards of courts-martial sentences in peace-time practices. But inasmuch as a condition of war transforms the whole situation for military discipline and puts into effect the strictest standards of military behavior, it is not possible to presume that the sentence length imposed in former peace-time practice would afford a suitable standard for comparison with war-time practice.

(B) *Standard gathered from civil courts*—Here it will be necessary to depart from the list of principal military offenses, which have no counterpart in the civil courts, and to resort to the principal civil offenses represented in the military records. The criminal statistics of the United States are but imperfectly organized for study, and the only available record for the present purpose that could be found, after extensive search, is the report of the Director of Census for 1910, entitled "Prisoners and Juvenile delinquents in the United States." Table 42, at page 64, sets forth the variance in periods of sentences imposed for the various civil offenses. Setting these side by side with the sentences imposed for the corresponding offenses by military courts during the year ending September, 1918, the result is shown in the following Table III.

In this Table III the percentages are the significant items. On the whole, it appears that the percentage of long sentences is greater in the military courts than in the civil courts. For example, in the offense of forgery the sentences of 10 years and over were 15.7 per cent of all sentences, while in the civil courts they were only 3.3 per cent; the sentences for 5 to 9 years were 28.3 per cent, while in the civil courts they were only 11.3 per cent.

But this general trend is marked by so many exceptions that it is hardly open to any general conclusions. For example, in perjury the military court gave a sentence of under one year for 64.3 per cent of the cases, while the civil court gave its lowest sentence in only 28.9 per cent of the cases. Similarly for burglary the military court gave its lowest sentence in a larger percentage of cases than did the civil court. So, too, turning to the highest sentence, it appears that murder and manslaughter received less severity of sentence in the military courts than in the civil courts; for murder only 41.7 per cent were sentenced in military courts to the death penalty or life imprisonment, while in the civil courts 86.9 per cent received such penalty; and similarly for manslaughter the percentages of sentence of life imprisonment or imprisonment of 10 years or over or imprisonment from

5 to 9 years were only about half as large as the perentages of the same sentences in the civil courts.

Moreover, it must also be remembered that the moral heinouness and danger of even these civil offenses, common to both codes, varies

TABLE III—SENTENCES FOR CIVIL OFFENSES IN MILITARY AND CIVIL COURTS COM

Offense.	Court.		Total.	Life or death.	10 years and over.	to 9 5years.	2 to 4 years.	1 to 2 years.	
Forgery.....	Military...	number	223	.....	35	63	69	20	
		per cent	100	.....	15.7	28.3	30.9	9	
	Civil.....	number	1,290	.....	43	146	569	323	
		per cent	100	.....	3.3	11.3	44.1	25	
	Military...	number	14	.....	.....	.....	2	3	
Perjury.....		per cent	100	.....	.....	.....	14.3	21.4	
	Civil.....	number	128	.....	1	3	38	49	
		per cent	100	.....	0.8	2.3	29.7	38.3	
Embezzlement	Military...	number	162	.....	22	31	36	23	
		per cent	100	.....	13.6	19.	22.2	14.2	
	Civil.....	number	487	.....	7	22	76	117	
		per cent	100	.....	1.4	4.5	15.6	24	
Robbery.....	Military...	number	117	.....	42	34	28	3	
		per cent	100	.....	35.9	29.1	23.9	2.6	
	Civil.....	number	904	2	192	205	229	133	
		per cent	100	0.2	21.2	22.7	25.3	14.7	
Larceny.....	Military...	number	1,025	.....	89	131	237	188	
		per cent	100	.....	8.7	12.8	23.2	18.3	
	Civil.....	number	19,136	3	120	393	1,970	2,636	14
		per cent	100	.....	0.6	2.1	10.3	13.8	
Rape.....	Military...	number	15	[1]7	4	2	1	.....	
		per cent	100	46.6	26.7	13.3	6.7	.....	
	Civil.....	number	763	[2]38	181	174	149	117	
		per cent	100	5	24	23.1	19.8	15.5	
Gambling....	Military...	number	15	.....	1	3	1	.....	
		per cent	100	.....	6.7	20	6.7	.....	
	Civil.....	number	671	.....	.....	1	7	20	
		per cent	100	.....	.....	0.1	1	3	
Burglary.....	Military...	number	29	.....	4	8	7	3	
		per cent	100	.....	13.8	27.6	24.1	10.4	
	Civil.....	number	4,925	7	227	750	2,015	1,062	
		per cent	100	0.1	4.6	15.2	40.9	21.6	
Threats to do		number	30	.....	5	4	5	3	
bodily harm	Military...	per cent	100	.....	16.7	13.3	16.7	10	
	Civil.....	number	235	.....	.....	1	2	14	
		per cent	100	.....	.....	0.4	0.9	6	
Murder.....	Military...	number	24	[3]10	4	2	2	3	
		per cent	100	41.7	16.7	8.3	8.3	12.5	
	Civil.....	number	937	[4]814	109	3	7	4	..
		per cent	100	86.9	11.7	0.3	0.7	0.4	..
Manslaughter.	Military...	number	33	.....	[5]7	5	[6]9	6	
		per cent	100	.....	21.2	15.2	27.2	18.2	
	Civil.....	number	1,437	[7]24	520	419	341	97	
		per cent	100	1.6	36.2	29.2	23.7	6.8	

[1]6 hanged. [2]3 death. [3]2 hanged, 2 commuted. [4]118 death. [5]3 migitated. [6]1 mitigated. [7]5 d

more or less in military life and civil life. Larceny, for example, which to the civilian mind never receives the deepest measure of reprobation among property offenses, has long been deemed through-

out the rank and file of the Army as an intolerable offense, for the safety and mutual confidence of military intimacy as fellow soldiers becomes impossible unless every soldier can be assured that his few and precious belongings can be safely left unguarded in his restricted quarters. In those sections of our country where the horse has always been indispensable to every man's daily occupation, the offense of horse stealing is visited with penalties which seem grossly severe to the residents of other communities; indeed, so far has this principle been carried that in one Southwestern State noted for its splendid horses the law (unless it has been recently changed) permits the owner of a horse to shoot the horse thief while in the act of running away with the property, a privilege not accorded by the law of any other State. It is undoubtedly due to this sentiment that in the table above the offense of larceny is found to be visited with sentences of more than two years in percentages considerably in excess of the percentages found in the sentences of civil courts.

I mention the foregoing instances only as a preface to the general suggestion that the use of longer terms of sentences in military courts than in civil courts for some of the above civil offenses may well be explained by the exigencies of internal military life and by the habitual standards of military conduct known to all soldiers, rather than by any disposition on the part of military tribunals to impose heavier sentences for offenses of an identical nature.

I must freely admit that, in any discussion of the severity of sentences, notions of severity are so widely different that it will be hopeless to satisfy the standards of all varieties of critics. There exists today, in some minds apparently, a sentimentality towards offenders of every sort, which we could never expect to satisfy without a virtual undermining of the entire criminal law, whether military or civil. I received recently a letter, complaining of the "inhuman and outrageous punishments administered for trivial matters"; this expression being used of a court-martial sentence of ten years for conspiracy to rob. In the particular case, four soldiers, out on leave in a city adjacent to a military camp, assaulted with a pistol and violently beat a fellow soldier at midnight in a vacant lot, for the purpose of obtaining his money by force; and upon his raising an outcry they ran away, and his wounds were attended to by the military police. To apply the term "trivial" to this act of cowardly violence, and the term "inhuman" to the sentence of ten years, indicates such a singular standard of moral judgment that it would be impossible to reach an agreement, in estimating the severity of the

sentence, with those who are willing to acknowledge such a standard of judgment. I am assuming, in what I have now to say, that the idea of severity is lways to be interpreted in the light of a rational standard of moral judgment based upon the danger and heinousness off the offender's act in comparison with the sentence imposed.

I close this comment with a forceful quotation from a recent editorial in a leading daily journal:

> When a soldier goes absent without leave, deserts his post of duty to see a dying father, he does so because his own personal desires are stronger than his sense of responsibility to his country. It may be a hard thing to give up seeing a dying father, but it is a harder thing to give up running away in the face of the enemy.
>
> That is what military justice is about. The sole preoccupation of any army, wherever it is, is to train its men and keep them trained to obey the will of the commander under the most trying possible circumstances and serve the will of the Nation. If disobedience had been tolerated in the United States, our Army in Europe would not have captured the St. Mihiel salient nor fought six weeks in the Argonne.
>
> An army to be successful in the field must, from the moment it begins to train at home, have absolute control of its discipline.

I close this part of my letter, therefore, by noting that the general practices of courts-martial, judged by the maximum sentences allowable by the military code, must be deemed not to merit the charge of excessive severity and that, in my own opinion, they rather merit the opposite characterization.

This general condition of things, however, I repeat, must, of course, be sharply discriminated from the question of the excessive severity of a particular sentence measured in the light of the circumstances of the individual case. That is a question totally irrelevant to the judgment to be passed upon the propriety of the practices of courts-martial in general, as judged by their average treatment of the offenses coming before them.

(*b*) *The reasons for the severe group of sentences.* The question may still be asked, however, whether even for these serious military offenses those sentences greater than, let us say, 5 or 10 years were necessary for the morale of the Army.

I must premise by pointing out first that these long sentences represent only a minute fraction in the mass of court-martial sentences, and, secondly, that the long periods of years named in those sentences were only maximum, and were therefore nominal only.

As to the first point, I call attention to the total number of sentences for a year, including trials in all grades of courts. These were

approximately 240,000, of which the military offenses were at least 200,000 in round numbers. In these 200,000 sentences the vast majority, probably about 185,000, were imposed in summary courts, and those could not by law exceed three months. Another 10,000 approximately, were in special courts, and those could not have exceeded six months. Some 7,000 were in general courts, the only court authorized to impose a sentence of higher than six months. Now, for the year October 1, 1917, to September 30, 1918, the records of this office show that there were only 532 sentences for a period of 15 years or more; that is, less than three-tenths of 1 per cent of the over 200,000 trials for military offenses. And there were only about 2,200 sentences for five years or more, or a trifle more than 1 per cent of the 200,000 sentences for military offenses. If, therefore, anything is found to be wrong about this group of severe sentences, the wrongness can only affect a very small fractional corner in the area of military justice. There may be at this moment 532 cases of smallpox in the population of the metropolis of Manhattan, with more than 4,000,000 inhabitants; but this does not signify that there is any doubt as to the general health immunity of the metropolis against that plague.

The second point above mentioned is that these long periods of years named in the sentences were in effect nominal only. There being no minimum number of years, the offender may be released at any time by reduction or remission of sentence on recommendation of the clemency section of this office, where the offense is a purely military one. That this is not merely a possibility, but an actuality, will be seen from the fact, later to be cited, that nearly 10 per cent of the 12,000 sentences of the last calendar year have in fact been selected for remission or mitigation, and that in those sentences an average of 90 per cent of the total periods has been cut off; for example, of the 2,035 sentences for desertion, some 577, averaging a sentence of 3.80 years, were selected for reduction, and this average was reduced, on the recommendation of my office, to an average of three months. In other words, the imposition of a 25-year sentence does not signify that 25 years of a sentence will be served; the experience of the year 1918 having shown that of the sentences selected for reduction only 10 per cent of the term is actually served. It is in this sense that I refer to these long-term figures for the maximum duration as merely nominal.

As an illustration conveniently at hand, let me take the four cases cited by Senator Chamberlain as illustrating excessive severity of

court-martial sentences; he cited the case of a 25-years' sentence for absence without leave; another of 15 years for the same offense, and two cases of 10 years for sleeping on post. And yet the records of this office show that in two of these four cases the Judge Advocate General had advised that there was no legal objection to their restoration to duty, on December 10 and December 12, 1918, respectively, two weeks or more prior to the date of the Senator's speech in Congress; and the records of the Adjutant General's Office show these men actually restored to duty on December 23, 1918, one full week before the day when the Senator arose to complain of the severity of these cases; and all of this in the course of the normal operation of the system. These illustrations point to what I mean in saying that the long term named in the sentence is merely nominal, in that the offender may be, and in practice frequently is, restored to duty at an early period of a few months or more, totally regardless of the long period named in the sentence.

Why then (it may be asked) was it necessary or wise to name such long maximum terms in the sentence? The answer here must be sought in the necessities of discipline while our Army was being raised, and in the just apprehensions of responsible officers over the fulfillment of their huge task. Half a million men were taken by draft in 1917, fresh from the associations of civil life; nearly another half million were entering by enlistment; and before three-quarters of the year 1918 had passed nearly four million men had been taken into the Army and were in process of training. This training was conducted under circumstances of urgent haste never before known in our history—for the tide of battle was going against the allies, and the anxieties of the civilized world awaited breathlessly the arrival of our troops. To make good soldiers out of this huge and undisciplined mass, in an average period of three or four months for each contingent, was one of the most extraordinary feats ever accomplished in the history of military training; and it has testified in the highest degree to the adaptability and versatility of the American character. But it required urgent haste, and while it was going on the curtain was not raised upon the future, and the glorious results which now lie before us were still in the realm of doubt.

Our officers, charged with the duty of bringing these undisciplined men into immediate readiness for battle, were weighted with anxiety, day and night, at the possibilities of failure. The one imperative necessity was to inculcate the sentiment of obedience—obedience instant and absolute. For those few—and they were less than 15,000

out of 4,000,000—who committed serious military offenses, and thus showed themselves recalcitrant to the requirements of military discipline, some form of absolute moral compulsion was necessary. Whether that moral compulsion ought to take the shape of a sentence of 2 years or 10 years or 20 years was a matter about which it would have been dangerous to speculate. The situation called for an absolute certainty. The sentences must be such that they imposed for any disobediently disposed soldier a penalty which would be absolutely compelling. When those officers selected occasionally (and the percentage of cases was extremely small) a long-term sentence which should have this imperative significance, they knew that this was only a maximum term and that there was no minimum, and that an early release would be easily earned by those who deserved it. And I can not bring myself today, nor, I think, can any man who will reflect on that situation, to question now the wisdom of their judgment. And I will even go so far as to say that probably none of these officers supposed for a moment that these long terms would ever actually be served. It was their business and duty to impose a compelling sense of discipline, and they chose those terms which, in their judgment, would do so. And it was not for them to undermine the effect of their discipline by announcing that none of these sentences need be served a moment longer than the exigency of the war required. They knew that, if the danger should pass and if victory should crown their efforts, the authorities of the Army, and particularly the scrutiny of my office, would see to it that the sentences were appropriately cut down. And I think it can be safely asserted that, so far as there is anywhere an individual long-term sentence that could have been deemed excessive, the man who received that sentence has not yet served a single day of the excessive period. In other words, if an individual injustice was done in the length of period imposed, the injustice was never one which could not be corrected before it became in fact an injustice.

How thoroughly my office is now undertaking to apply this corrective in proper cases I will later mention. But I am concerned now, in these days of international safety and of national demobilization, to carry back in retrospect the minds of all reflecting citizens to the period of 1917, when the fate of the world trembled in the balance and the embryo armies of the United States were the hope of civilization for turning that balance in the direction of world rescue. The huge responsibility of preparing these armies almost over night lay upon these men who administered military discipline.

How magnificently they discharged that task has been shown by the results of the battle field. I, in common with all other intelligent citizens, shared their anxieties, and I for one can not now remain silent while they are criticized for the conscientious exercise of that judgment in applying the necessary measures. Had they failed, they might have been put to the bar to account for themselves. But they succeeded, and in a manner which has commanded the admiration of the world's veteran soldiers. It is easy to be wise after the fact. But in the light of their superb success let no one now censoriously presume to disparage the soundness of their judgment nor the wisdom of the measures by which they achieved that success.

(*c*) *Pending mitigation or remission.* I said above that I would conclude this part of my comment by mentioning the measures now practically under way for mitigating and remitting the sentences of courts-martial, in the light of the termination of hostilities and the restoration of the national safety.

On the 20th of January you approved a recommendation of mine, dated January 18, proposing the institution of a system of review for the purpose of equalizing punishment through recommendations for clemency. A board of three officers was designated by me in the Office of the Judge Advocate General on January 28. This board of officers, with a large number of assistants, is now examining the record of every sentence of courts-martial under which any soldier is now confined in any prison in the United States. The recommendations of this board will go so far as to remit the entire portion not yet served upon a sentence of confinement or to reduce it to such amount as seems suitable to the present situation in view of the necessities of military discipline. It is expected that at least 100 cases a day will be passed upon by this board. The completion of the work of this board, which can not require more than a few months at the most, will signalize a complete readjustment of all sentences in a manner appropriate to the termination of hostilities and the resumption of peace-time requirements for military discipline. It is certain that every sentence that might now be deemed in excess of the necessary period will be duly reviewed and that no soldier now in confinement will serve any period in excess of that just amount, so far as human powers of judgment are equal to this task.

II. Variability of Sentences

When we come to the question of variability of sentences, we reach a subject which has been the fertile field for complaint and

criticism in civil courts for a century past. It is notorious that the independent judgment of different courts and of different juries seems to be characterized by the most erratic and whimsical variety. Such has been the constant burden of complaint in civil justice, and it can hardly be hoped that military justice could escape a similar complaint in some degree. On the other hand, it must always be remembered that here the individual circumstances vary so widely that a variation of sentences is perfectly natural, and that the mere variation of figures in itself signifies very little where the individual circumstances remain totally unknown to the critic. Nevertheless a variability of sentences for the same offense is something which naturally excites attention and caution; and it should be the object of appellate authorities to equalize the penalties for the same offense where no obvious reason for substantial difference is found. How far the revisory authority of the Judge Advocate General and the clemency powers of the Secretary of War have been effectual to secure such equalization will be noted later in this letter. At the present the inquiry of fact is whether there has been such variability and at what point it has taken place.

The table above referred to, and already handed to you, summarizes for the nine principal military offenses the variance of the sentences, first by months of the year covered, and secondly by jurisdictional areas from which the court-martial records come up for revision. In summary of these variances it is here to be noted that such variances obviously exist; that these variances are not in themselves any more striking than those that are found in the sentences of civil courts, as already shown in the other table submitted to you; that in seeking the possible source of these variances it appears very strikingly that there has been a slight but appreciable increase in the number of higher-period sentences as we come down to the later months of the war; and that, so far as jurisdictional areas are concerned, there have been notable variances which seem in some cases to localize the higher-period sentences for certain offenses in certain specific areas.

As illustrating the foreging inferences it will be sufficient here to take the single offense of *desertion.*

Examining it by *months* it will be noticed that the long-term sentences of 10 to 15 years, and of 15 to 25 years, and over 25 years increased slightly in their ratio to the whole of the sentences for the month as we approach the later months of the year under examination. For example, for the months of October, 1917, to February, 1918,

there were no sentences over 25 years, although the number of convictions increased from 55 to 196 (the increase, of course, being due to the much greater ratio in the increase of armed forces). But during the months of April to July, with approximately the same number of convictions, averaging 225, the number of sentences for over 25 years increased from 4 to 9, to 15, and finally to 33. Apparently, therefore, some conditions in the Army changed as the months advanced so as to induce this variance in the direction of higher-period sentences. Just what those conditions were can not even be the subject of speculation without a very careful inquiry; merely the fact is here pointed out.

Again, turning to the *jurisdictional areas,* we find that the Central Department shows about 9 per cent of sentences for over 10 years, while the Eastern Department shows only 3 per cent; that the Twenty-eighth Division, having 21 convictions, imposed no sentences in excess of 10 years, while the Eightieth Division, with exactly the same number of convictions, imposed 14 sentences greater than 10 years.

As further indicating this variance by jurisdictional areas, a glance at the same table under the offense of absence without leave, shows that, in the Twenty-eighth Division, which exhibited the above leniency for desertion, the offense of absence without leave was given a sentence of under 2 years for 127 out of 140 convictions; while the Eightieth Division, which had shown a large majority of long-term sentences for desertion was, on the other hand, lenient for the offense of absence without leave, imposing 16 sentences of under 2 years, out of 20 convictions. Comparing again the Thirty-sixth and Thirty-ninth Divisions, with substantially the same number of convictions, viz., about 175, one finds that the former imposed about 20 sentences of above 10 years, while the other imposed 101 sentences above 10 years. This same Thirty-ninth Division had also used a majority of higher period sentences for desertion, whereas the Thirty-sixth Division showed for desertion a record that averaged with the other divisions.

It will be seen, therefore, that in many, if not in most cases, the extreme variances may be traced to difference of practice in the different jurisdictional areas. Just what conditions existed which would justify in the individual case, or in the general trend of cases, this variance between divisions, can hardly be the subject even of hypothesis. But it must be obvious to any candid observer that there do exist wide differences of conditions, not only in the racial and educational make-up of the different camps, but also in the

morale and necessities of discipline prevailing in different camps. It is well known that the sentences of civil courts for civil offenses vary widely in the different States. For example, in 1910 (Census Report, 1910, "Prisoners and Juvenile Delinquents," p. 50), the percentage of sentences of 10 years or over was 9.7 in the East South Central States, but was only 0.1 in the New England States; in Mississippi, it was 22.51, but in California it was only 2.3. This illustration is mentioned merely to suggest that whenever one discovers that variances in sentences have a certain relation to variances in camps or divisions, the subject becomes at once too complex for hasty judgment.

Apart from what is now being done in my office by way of the equalization of sentences by commutation in the way of clemency, I am only concerned here to point out the facts as they are found in the records relative to the action of the courts-martial themselves; and to note that such variances (apart from peculiar individual cases) as are revealed in any noticeable amount, seem to be due most largely to differences of conditions in the different camps, divisions, and other jurisdictional areas; and the greatest caution must be exercised before passing judgment upon such variances as inequitable, without being fully familiar with the conditions operating in those places.

Moreover, I must utter a further caution against the popular presumption that a difference in sentences of different individuals for the same offense signifies necessarily any inequity. The individual circumstances differ so widely that the injustice would consist, not in the variability, but in the rigid identity of the same sentence for the same offense in every individual case. This very matter of variation in sentences is one of the triumphs of modern criminal law. One hundred years ago virtually every criminal code of the civilized world was marked by a rigid fixation of penalties for each variety of offense. It was regarded as one of the great objects of criminal reform in that era to introduce variability of the sentence and adapt it to the circumstances of the individual case. One of the first criminal codes to introduce this reform was that of the State of Louisiana, drafted just a century ago by the great Edward Livingston, recognized as the most eminent jurist of his day; this code received the approval of the jurists of the world; and one of its most remarkable features was its recognition of the variability of sentences for varying individual circumstances. Ever since that day all progress in criminal codes has included this element in an increasing degree. The particular virtue claimed and proved for the indeterminate sentence, which

has now been adopted in probably three-quarters of the States of our Union, is that it gives full play for the adaptation of the sentence to the individual case. We must, therefore, always recall that the variability permitted by law is in itself a powerful feature tending to the apportionment of justice according to the circumstances of each case.

The one complementary element necessary in a criminal code in guarding against too great a variability in the action of different courts is the power of ultimate readjustment by some central tribunal. In the language of one of the very Senators who has criticised some of these sentences:

> The sure cure for it all is to have some sort of a tribunal, appellate or supervisory, that shall have the power to formulate rules and equalize these unjust sentences. * * *

Precisely this power of recommendation is now exercised, and long has been, by the Judge Advocate General's Office, in its clemency section. The explanation of this activity brings me to the next point of criticism.

III. Mitigation by Clemency Recommendations in the Judge Advocate General's Office

The distinct implication running through the critical remarks above quoted is that there exists no central authority that can check, equalize, or correct such severity or variability as may be found to merit such action, and that the Judge Advocate General's Office, charged with the duty of revising these court-martial records, either acquiesces in the result of the court martial sentences as approved by the reviewing authority or makes no attempt to check any revisory action.

It is, therefore, necessary to emphasize that the Judge Advocate General's Office not only scrutinizes the court-martial records for the purpose of discovering errors of law and procedure, but also, in the Clemency Section of the Military Justice Division, occupies itself exclusively with the scrutiny of records for the purpose of recommending for remission or mitigation those sentences which are open to question as to severity or inequality. This power has been exercised habitually ever since our entrance into the war, as well as before that date.

Inquiring into the results to see what the facts show the question presents itself: To what extent has the Judge Advocate General's Office called for a reduction of sentences by a recommendation of clemency to the Secretary of War? And I note in passing that in no

instance, so far as I am informed, has such a recommendation of clemency failed to be approved and given effect by yourself.

(1) The extent of such recommendations as to number of sentences will be found by taking the total number of sentences for all offenses classified by length of term, noting the number of these sentences recommended for reduction by clemency by the Judge Advocate General's office, and then reckoning the percentage of offenses of each length thus reduced. This gives the following results:

TABLE IV—DISTRIBUTION OF SENTENCE REDUCTIONS BY JUDGE ADVOCATE GENERAL'S OFFICE, ACCORDING TO LENGTH OF ORIGINAL SENTENCE

	Total sentences, by length of terms, for 9 principal military offenses, Oct. 1, 1917, to Sept. 30, 1918	Sentences recommended by Judge Advocate General's Office for reduction, 9 principal military offenses, Jan. 1 to Dec. 31, 1918	
	Number	Number	Per cent
Total	7,624	947	12.42
Below 2 years	3,886	330	8.49
2 to 3 years	483	174	36.02
3 to 5 years	482	135	28.00
5 to 10 years	1,064	197	18.51
10 to 15 years	626	68	10.86
15 to 25 years	373	33	8.84
25 years or more	159	10	6.28

The important thing to notice about the table is that it shows 12 per cent of the total sentences to have been reduced by clemency exercised on recommendation of the Judge Advocate General. I see no reason to doubt that this 12 per cent is ample enough to cover all the individual cases in which an excessive severity would have been apparent on the face of the record.

The above table shows the reduction in its relation to the sentences of different lengths. The table shows that the largest percentage of reduction occurred in the sentences of medium length, and that the smallest percentages of reduction occurred in the sentences of shortest and of longest periods.

This result is perfectly natural and appropriate. The shortest sentences are those in which there would be the least call for reduction by clemency on the ground of excessive severity. The longest sentences are those in which the reduction on the ground of excessive severity

would presumably not bring them to an extremely low period and therefore in which the time for recommending such reduction had presumably not arrived.

(2) How much total reduction did this action effect in the total length of all the sentences acted upon? This will afford some gauge of the thoroughness of the action in the nature of clemency. Table V below shows the number of sentences recommended for reduction, the total years of the original sentences, the total years reduced on recommendation of the Judge Advocate General's office, and the net years of sentence as actually served. The figures are given for the nine principal military offenses, as well as for the total of all offenses:

TABLE V—REDUCTIONS OF SENTENCES RECOMMENDED BY CLEMENCY DIVISION, JUDGE ADVOCAT GENERAL'S OFFICE, ACCORDING TO AMOUNT OF REDUCTION, JANUARY 1, 1918 TO DECEMBER 31, 191

Offenses.	Number of court-martial sentences, Oct. 1, 1917, to Sept. 30, 1918.	Number of sentences recommended by Judge Advocate General's office for reduction.		Years of original sentence in cases selected for recommendation.		Total years reduced on recommendation of Judge Advocate General's office.		Net years of sentence as served.		Per cent of aver ages
		Number.	Per cent.	Number.	Average.	Number.	Per cent on col. 3.	Total years.	Average in years.	
Total offenses	12,472	1,147	9.20	4,331.28	3.78	3,876.69	89.50	545.59	0.40	10.5
Desertion	2,025	577	23.49	2,193.49	3.80	2,056.56	93.76	136.93	.24	6.2
Absence without leave	3,362	112	3.33	361.67	3.23	313.72	86.74	47.95	.43	13.2
Sleeping on post	609	63	10.34	187.08	2.97	150.14	80.25	36.94	.59	19.7
Assault and attempt to assault	173	34	19.65	135.00	3.97	108.09	80.07	26.91	.79	19.9
Mutiny	51	10	19.61	49.00	4.90	46.81	95.53	2.19	.22	4.4
Disobedience, disrespect, disloyalty	1,404	151	10.75	567.17	3.75	454.57	80.15	112.60	.75	19.8
Disobedience of regulations	208	46	22.16	192.75	4.19	116.07	60.22	76.68	1.67	39.7
Disobedience of orders	1,196	105	8.78	374.42	3.57	338.50	90.41	35.92	.34	9.5
Miscellaneous, forgery, larcency,	4,848	200	4.13	837.87	4.19	746.80	89.13	91.07	.46	10.8

Referring to the table for details as to the specific offenses, I will point out here merely that for all offenses, military and civil, total reduction effected was a reduction of 3,876 years out of an original period of 4,331 years, or a reduction of 89½ per cent. In other words, action of this office, in effecting reductions in the 1,147 sentences selected on their merits for reduction, cut them down to 10.50 per cent of their original amount. Presenting the same result in another form, the average original sentence, of these 1,147 sen-

tences, was for a period of 3.78 years (or nearly 4 years), and the average sentence served as reduced was only 0.40 of one year, or less than 5 months.

These figures, as to reduction effected in the length of the sentences, demonstrate that the action of this office was a radical one, and must have served to eliminate any excessive severity in those sentences. That the sentences selected for such recommendations of clemency included *all* of the sentences meriting the term "severe," neither I nor anyone else would be in a position either to affirm or deny without an examination of every record.

How extensive is the scope of reduction now undertaken for all sentences, by the special clemency board recently appointed at your instance, has already been told.